IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 43 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHAMMED ABDUL REHMAN SHAIKH

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 43 of 2001

MR Anil Verma for Mr MM TIRMIZI for Petitioner No. 1

Mr K G Sheth, APP for Respondent No. 1

MR AMIT J SHAH for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 21/02/2002

This is a revision application under section 397 read with section 401 of the Criminal Procedure Code, 1973 (for short, 'the Code') challenging the order of the

learned Addl.Sessions Judge, Ahmedabad (Rural) dated 30.12.2000 in criminal misc. application No.627/2000 under which the learned Addl.Sessions Judge dismissed the said application of the present petitioner for getting interim custody of the vehicle in question pending hearing and disposal of the case in question. It appears that the petitioner's truck has been seized by the Investigating Officer and it was alleged that the said truck was involved in offence punishable under the provisions of Narcotics, Drugs & Psychotropic Substance Act and section 25 of the Arms Act. Therefore, the truck was seized being DCM Toyota Mini Truck No. MH/06/5233. The petitioner applied for interim custody of the vehicle and the said application was turned down and, therefore, this revision.

2. Rule was issued and in response to the service of rule, Mr K G Sheth, learned APP appears for the State of Gujarat and Mr Amit Shah, learned Advocate appears for respondent No.2.

I have heard learned Advocates for the parties and have perused papers. During the course of hearing, it has transpired from the record that the mini truck in question has actually not been used for the purpose of carrying illegal articles. But it seems that there was an alleged contract for the carriage of goods but before the goods could be actually carried in the mini truck of the petitioner, it was seized and, therefore, it could not be used for the said purpose. In that view of the matter, it cannot be said that the mini truck could not be handed over to the petitioner.

3. It has been contended by the learned Advocate for respondent no.2 that the petitioner has taken a contrary stand with respect to the contract for carrying the articles. That at one stage it was said that the vehicle was given on rental basis and at another stage it has been alleged that the vehicle has been given on commission basis. He has argued that if the vehicle was said to be given on commission basis, then the petitioner would be party to the profit derived from the said business. Apart from the said position, the fact remains that the vehicle has been seized before any illegal article was transported in it and therefore, the vehicle has not been used for the said purpose.

4. It has also been argued by him that in view of the illegal user or prospective user of the vehicle, it would be just and proper to impose strict condition including the condition for bank guarantee. In the

present case, as indicated above, the vehicle has actually not been used for illegal purpose. However, sufficient security should be obtained so that the vehicle could be required to be presented before the Court concerned as and when so required.

5. It seems that the aforesaid aspects have not been properly appreciated by the trial court and, therefore, the order of the trial court appears to be illegal on the face of it and, therefore, it is necessary for this court to intervene in this revision.

6. For the foregoing reasons, this revision application is allowed. The muddamal vehicle being DCM Toyota Mini Truck No.MH/06/5233 shall be handed over to the petitioner by way of interim custody, pending hearing and disposal of the main case against the accused person/s on following conditions:

i. The petitioner shall furnish solvent surety and P.R. in a sum of Rs. Four lakhs to the satisfaction of the trial court.

ii. The petitioner shall not use the said vehicle for any illegal purposes

iii. The petitioner shall present the said vehicle before the Court concerned as and when so required.

iv. The petitioner shall not transfer ownership or possession of the said vehicle to any other person directly or indirectly till the disposal of the case in question.

v. The petitioner shall not create any financial burden on this vehicle till the disposal of the case.

This shall form the terms and conditions of the bail bond before handing over of the truck in question to the petitioner by way of interim custody as aforesaid.

Copy of this order shall be sent by the trial court to the appropriate transport authority in Maharashtra State after ascertaining the correct address.

Rule is made absolute to the aforesaid extent. D.S. permitted.

21.2.2002 [D P Buch, J.]

msp